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Butenko Challenges Legality of Evidence Uncovered by F.B.I.

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NEWARK, Nov. 20 — The lawyer for John W. Butenko, an American engineer on trial for conspiring to pass Air Force secrets to the Soviet Union, charged today that the Federal Bureau of Investigation may have gathered evidence against Butenko illegally.

The defense attorney, Raymond A. Brown, demanded that Federal Judge Anthony T. Augelli hold a hearing to learn whether, in a number of searches of Butenko's apartment at 366 Park Avenue, Orange, N.J., last year, the F.B.I. removed evidence without a search warrant.

Butenko's 73-year-old landlord, Irving Barenberg, testified that F.B.I. agents had made a number of visits to Butenko's apartment during the six-month period last year when they had Butenko under surveillance. He said they did not show him a search warrant.

Mr. Brown said that if any information had been accumulated by the F.B.I. in its search without a warrant Butenko's rights had been violated.

He suggested that any evidence submitted in the seven-week trial that might be based on such information would be found inadmissible.

U.S. Case Closed

The chief prosecutor, Assistant United States Attorney Sanford M. Jaffe argued that Mr. Brown's motion was made too late. Mr. Jaffe closed the Government's case yesterday.

Judge Augelli took the motion under advisement and ordered the trial to be continued next Tuesday morning. On Monday the arguments on the motion will be heard by the judge and he will rule as to whether a hearing would be in order.

The Government had built its case on a series of alleged clandestine meetings in northern New Jersey between Butenko and Russians. Butenko and the Russians were arrested Oct. 29, 1963, in Englewood. At that time, F.B.I. agents testified

during the trial, they found two vital national defense documents in the Russians' car.

The Government charged that the documents had been taken from the offices of an International Telephone and Telegraph Company laboratory in Paramus, N. J., by Butenko, who worked on secret Air Defense projects.

Igor A. Ivanov, a driver employed by Amtorg, the Soviet trading organization, is being tried as a co-conspirator with Butenko. Three other Russians were implicated but were expelled from the country after the arrests.

Judge Augelli said late today he did not believe the case could be decided before the end of next week. The trial is being held before a jury of eight women and four men. They have heard testimony from at least 30 F.B.I. agents, a number of Air Force officers and a half dozen character witnesses for Butenko.